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(21)

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.21/2001

APPELLANT Satvantin Bai, Aged 58 years, wife of Sukhram Dhobi, R/o Shiv Mandir, Sirgitti, P.S. Tarbahar, Bilaspur(CG)

Versus

RESPONDENT State of Chhattisgarh

D.B.: HON'BLE SHRI L.C. BHADOO, J. &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(24.09.2007)

L.C. Bhadoo, J:-

Ms. Meenu Banerjee, counsel for the appellant.

Shri D.K. Gwalre, Assistant Public Prosecutor for the State.

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 8.12.2000, passed by the Sessions Judge, Bilaspur(C.G.) in Sessions Trial No.155/98, whereby the learned Sessions Judge, after holding the accused/appellant guilty for commission of offence punishable under Section 302 of I.P.C., sentenced her to

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undergo imprisonment for life and to pay a fine of Rs.5000/-, in default of payment of fine to further undergo R.I. for 1 year, however, the learned Sessions Judge acquitted the co-accused namely Kamla Dhobi.

The case of the prosecution in brief is that Meena bai (since deceased) was the wife of Sillu Dhobi. The accused/appellant Satvantin Bai is mother of Sillu and mother-in-law of Meena bai. Kamla Bai is the aunt of Sillu. Meena bai was married to Sillu 2 years prior to the date of incident and there is a male child, aged about 2 to 2 ½ months out of the wedlock. Meena bai was the daughter of Meluram(PW-3) and Gangabai(PW-4). The accused/appellant Satvantin Bai along with the co-accused Kamla Bai used to quarrel with Meena bai on the pretext that she was not doing domestic works and Sillu, husband of Meena bai used to beat her on the instigation of his mother and aunt. Once Sillu gave beating to Meena bai after consuming liquor. On 17.9.1997 Satvantin Bai and Kamla Bai with a common intention to commit murder of Meena bai, inserted a cloth in the mouth of Meena bai and after pouring kerosene oil her body, they set her on fire. Hearing the cries, PW-2 Indira Bai came to the house of Sillu. She saw that Meena bai was burning and the accused/appellant Satvantin Bai was standing in the court-yard of the house, holding the child of Sillu in her lap. Meena

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bai was writhing; she was not able to raise cries. When Indira Bai enquired from Satvantin Bai as to how Meena bai has caught fire, Satvantin Bai replied her that she doesn't know and she did not make any attempt to extinguish the fire. Meena bai was admitted to the Government Hospital, Bilaspur in Burn Unit on 17.9.1997 at about 5.45 p.m. and at about 5.55 p.m. she died on account of burn injuries. She sustained 100% burn injuries. Merg intimation was sent along with a Constable of Nagar Sena at about 11.15 p.m. to the Police Station City Kotwali, whereupon, the first information report Ex.P/10 was registered by the S.H.O. Police Station, Tarbahar. The Investigating Officer went to the place of occurrence. He prepared site plan Ex.P/3. From the place of occurrence, he seized one yellow colour jerrican of 5 litres with a small quantity of kerosene oil in it. The burnt clothes of Meena bai and the match-box were seized under Ex./P/4. After giving notices to the Panchas under Ex.P/6, he prepared inquest Ex. P/7 on the body of Meena. Seized articles were sent to the Forensic Science Laboratory, Sagar under Ex.P/11 from where, report Ex.P/12 was received. The body of the deceased was sent for postmortem examination. Postmortem on the body of the deceased was conducted by Dr. S. Chatterjee(PW-6) on 18.9.1997. He found that a cloth was inserted in the mouth of the deceased; the body was burnt upto 95 %. He prepared

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postmortem report Ex.P/5 and opined that the cause of death was shock due to extensive burns.

After completion of the investigation, charge sheet was filed against Satvantin Bai and Kamla Bai in the court of Judicial Magistrate First Class, Bilaspur, who in turn committed the case to the Sessions Judge, Bilaspur. The prosecution in order to establish the charge against the accused persons examined 11 witnesses. The statement of the accused persons were recorded under Section 313 Cr.P.C., in which, they denied the material appearing against them and stated that they are innocent and have been falsely implicated in the case, no defence witness was produced.

The learned Sessions Judge, after hearing the counsel for respective parties, convicted and sentenced Satvantin Bai as aforementioned, however, acquitted Kamla Bai.

Ms. Meenu Banerjee, counsel appearing on behalf of the accused/appellant has not disputed the death of Meena bai by sustaining the burn injuries after pouring kerosene oil on her body.

In this case, there is no direct or ocular evidence. The whole case rests on the circumstantial evidence.

In order to convict the accused/appellant, based on the circumstantial evidence, the prosecution is required to establish the following circumstances as has been held by the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Apex Court in the matter of ***Sharad Birdhichand Sarda Vs. State of Maharashtra, (1984) 4 S.C.C. 116*** .

The following conditions must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence:

(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established,

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused

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In the present case, the prosecution has tried to establish the involvement of the accused/appellant in crime in question.

1st circumstance: that the accused/appellant Satvantin Bai used to harass and subjected to cruelty to the deceased Meena bai.

2nd circumstance: that Meena bai sustained burn injuries in the house of the accused/appellant and the accused/appellant-Satvantin Bai was present in the house at the time of incident.

3rd circumstance: that the accused/appellant did not make any attempt to extinguish the fire and no explanation has been offered by her as to how Meena bai sustained burn injuries.

1st circumstance: As far as this circumstance is concerned, the prosecution has relied upon the evidence of PW-3 Meluram, father of the deceased and PW-4 Ganga bai mother of the deceased. PW-3 Meluram has stated that Meena bai was married to Sillu 2 years prior to the date of incident. On 17.9.1997, his brother-in-law Jhumuklal, who is residing in Sirgitti, came and informed him that Meena bai has sustained burn injuries and she is in serious condition, therefore, he along with Jhumuklal went to the house of his son-in-law,

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where, Satvantin Bai and Kamla Bai were present. He enquired from his son-in-law – Sillu, where is his daughter and how she sustained the burn injuries?, on which, Sillu replied that she has been admitted to the hospital, where she had died. Sillu also stated that Meena bai set herself on fire. Meluram has further stated that then he asked them how she was burnt, they must have harassed her, on which, Satvantin Bai and Kamla Bai replied that they have not done anything. Next day morning he went to the hospital and saw the body of his daughter.

In para 4 of his evidence, he has stated that before the incident in the month of Baisakh Meena Bai and Sillu came to his house then Sillu disclosed that once Meena Bai poured kerosene oil on her body, on which, he enquired from Meena bai as to why she poured kerosene oil her body, then Meena bai replied that Sillu came after consuming liquor and gave beating to her and she could not tolerate that, therefore, she poured kerosene oil on her body. She also stated that Satvantin Bai and Kamla Bai used to abuse her at times, but she did not say that Kamla Bai and Satvantin Bai used to quarrel with her. Thereafter, this witness was declared hostile and cross-examined by A.G.P. In cross-examination, he stated that Meena bai disclosed him only to the extent that Satvantin

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Bai and Kamla Bai are in the habit of abusing her, but they are not beating her.

PW-4 - Ganga Bai, mother of the deceased has stated that when she came to know about the fact that Meena bai has sustained burn injuries , she along with her husband went to the house of Sillu, where Kamla Bai and Satvantin Bai were present, on enquiring from them that how Meena Bai has sustained burn injuries, Satvantin Bai and Kamla Bai said that they have not set her on fire, Meena bai herself has set her on fire. After marriage when Meena Bai was sent to her in-laws place, she disclosed that her in-laws are not harassing her and they are keeping her happy. In the month of Baisakh, Meena bai came to her parents house when she was pregnant, at that time, she disclosed that her mother-in-law and aunt-in-law are saying that she is not doing the domestic works, she said that once both Satvantin Bai and Kamla Bai poured kerosene oil on her body saying that she is not doing the domestic works and Sillu gave beating to her. In the cross-examination, she has stated that the things Meena bai disclosed to her in the month of Baisakh, were not disclosed to the police by her.

From the above evidence of these 2 witnesses, as far as pouring the kerosene oil on the body of Meena Bai by her mother-in-law, the accused/appellant and Kamla Bai is

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concerned, there is no direct evidence to that effect. PW-3 – Meluram has stated that his son-in-law Sillu disclosed to him that once Meena Bai herself poured kerosene oil on her body, on which, he enquired from Meena bai as to why she poured kerosene oil her body then Meena bai replied that Sillu came after consuming liquor and gave beating to her and that she could not tolerate and poured kerosene oil on her body.

PW-4 – Ganga Bai has stated that Meena Bai disclosed to her that once both Satvantin Bai and Kamla Bai poured kerosene oil on her body saying that she is not doing the domestic works and Sillu gave beating to her, therefore, the versions of both the witnesses are contradictory to each other.

Moreover, it has come in the evidence that Meena Bai used to tell her parents that the accused/appellant was saying Meena bai that she is not doing the domestic works.

Beyond that there is no evidence that in any manner, the accused/appellant was demanding dowry or she was regularly harassing her on any reason. Based on the above evidence, it is difficult to arrive at a conclusion that the accused/appellant was harassing the deceased-Meena Bai. Moreover, as has been discussed earlier, there is contradictory evidence of the mother and father of the deceased regarding harassment.

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Even PW-3- Meluram, father of the deceased has admitted in his evidence that when Sillu and Meena Bai came to his residence, Sillu informed him that one day, Meena Bai had poured kerosene oil on her body, on which, he enquired from Meena Bai, then she informed him that Sillu came in a drunken condition and that is why, she poured kerosene oil on her body. This conduct of Meena Bai shows that Meena Bai was hypersensitive to ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide. The above conduct of Meena Bai shows that there was every possibility that Meena Bai might have committed suicide by pouring kerosene oil on her body.

2nd & 3rd Circumstance : As far as this circumstance is concerned, it is not disputed that Meena Bai sustained the burn injuries in the house of her in-laws and there is no evidence that the accused/appellant poured the kerosene oil. The only circumstance, which has been led by prosecution is that the accused/appellant did not made any attempt to extinguish the fire, which has been stated by PW-2, but she has stated in the cross-examination that Satvantin Bai was

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raising cries that "save save--" Meena bai has sustained burn injuries. Moreover, both the mother and father of the deceased have stated that on enquiry, Satvantin Bai and Kamla Bai disclosed that Meena bai has set herself on fire. Moreover, there is no cogent and clear circumstance on record, which shows that Satvantin Bai was having any reason to set Meena Bai, her daughter-in-law on fire.

On the contrary, as has come in the evidence of Meluram- PW-3, father of the deceased that once Sillu disclosed him that Meena Bai herself poured kerosene oil on her body, on which, he enquired from Meena bai as to why she poured kerosene oil on her body, then Meena bai replied that Sillu came after consuming liquor and gave beating to her and that she could not tolerate and poured kerosene oil on her body. Satvantin Bai did not extinguish the fire of Meena Bai; merely this fact cannot raise an irresistible inference or conclusion that Satvantin Bai had any reason or motive to set her daughter-in-law on fire.

Shri D.K. Gwalre, learned Assistant Public Prosecutor appearing on behalf of the State argued that the Doctor S. Chatterjee, who conducted the postmortem, has stated that the manner, in which, the cloth was inserted in the mouth of the deceased establishes that the cloth was inserted by somebody

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else and it was not possible for the deceased to insert the cloth in her mouth. This is the personal opinion of the Doctor, which is not based on any sound reasoning. It depends upon person to person and the mental faculty of the victim that what was prevailing in the mind of the victim at the time of incident. Many times it is possible that the victim put a cloth in her mouth in order to ensure that the cries should not go outside of the house, therefore, for the foregoing reasons, we are of the considered opinion that there is no cogent and clear legal circumstantial evidence on record, which may suggest or through which any irresistible conclusion can be arrived that the accused/appellant was the person, who set the deceased on fire and there is no other possibility.

Looking to the totality of the circumstance, a possibility of suicidal attempt cannot be ruled out, as has been discussed earlier. As per the settled law on the point of resting conviction on circumstantial evidence, in the present case, looking to the prosecution evidence, irresistible conclusion cannot be arrived that the accused/appellant was the author of the crime.

For the foregoing reasons, the conviction and sentence imposed upon the accused/appellant under Section 302 of IPC cannot be sustained and the same is liable to be set aside.

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	Accordingly, the appeal succeeds and the conviction and sentence imposed against the accused/appellant under Section 302 of IPC are set aside. She is acquitted of the said charge. It is stated that she is in detention since the date of judgment, therefore she be set at liberty forthwith, if not required in any other case. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**

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